

ORDINANCE 1607

AN ORDINANCE OF THE CITY OF LODI REPEALING CHAPTER 5.04. AND 9.16.010 B, OF THE LODI MUNICIPAL CODE AND ADDING CHAPTERS 3.01 AND 9.16.010 B TO THE LODI MUNICIPAL CODE RELATING TO BUSINESS TAX CERTIFICATION AND BUSINESS PERMITS

WHEREAS, the City's business ~~tax~~ ordinance has not been revised since 1948; and

WHEREAS, the City Council established the revision of the business ~~tax~~ Ordinance ~~as~~ a high priority at a special Council meeting on December 13, 1994; and

WHEREAS, the staff developed a revised business ~~tax~~ ordinance to improve equity and administrative simplicity and to increase revenues for general municipal purposes; and

WHEREAS, the revised ordinance was presented to the City Council at a public meeting on January 4, 1995; and

WHEREAS, forty-three days have ~~passed~~ between the public meeting on January 4, 1995 and the public hearing on February 15 1995; and

WHEREAS, Chapter 5.04 which provides for the regulation of business is deleted and added ~~as~~ Chapter 3.01 to ~~raise~~ revenues for general municipal purposes; and

WHEREAS, Chapter 9.16.010 B does not include the definition for a solicitor but refers to the definition in Chapter 5.04 which ~~is~~ to be deleted;

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Lodi ~~as~~ follows:

1. Chapter 5.04, Business Licenses, Taxes and Regulations, is hereby deleted in its entirety. Title 5 is hereby retitled: "Permits and Regulations".

2. New Chapters **3.01**, Business Tax Certification is hereby added, ~~as~~ described below.

3. Chapter 9.16.010B, Solicitors and Peddlers is hereby amended ~~as~~ described below.

CHAPTER 3.01 BUSINESS TAX CERTIFICATION

ARTICLE I. GENERAL PROVISIONS

SECTION 3.01.010. PURPOSE

The provisions of this chapter ~~are~~ enacted solely to raise revenue for general municipal purposes and ~~are~~ not intended for regulation.

SECTION 3.01.020 BUSINESS TAX CERTIFICATION REQUIRED

Business taxes are hereby imposed upon all businesses, professions, trades, vocations, enterprises, establishments, occupations, or callings conducting business in the city to which a business ~~tax~~ may lawfully apply, in an amount established by Resolution of the City Council. It shall be unlawful for any person to transact and carry on any business, trade, vocation, enterprise, establishment, occupation, or calling in the City not otherwise exempt without first having procured a business tax certificate from the City or complying with all of the applicable provisions of this chapter.

The business tax certificate shall be evidence only of the fact that such business tax has been paid. Neither the payment of the business ~~tax~~ nor the possession of ~~the~~ business ~~tax~~ certificate shall authorize, permit, or allow the doing of any act which the person paying or holding such business tax certificate would otherwise be entitled to do; nor shall it be construed as permission to conduct or **carry on** business at any place within the City where the conduct or carrying on of such business is prohibited or ~~fails~~ to comply with ~~the~~ City's **zoning**, planning, or building regulations, nor shall it be construed as permission to conduct or **carry** on a business in such a manner as to create or maintain a nuisance.

SECTION 3.01.030. EXEMPTIONS

The following persons and organizations **are** exempt from the provisions of ~~this~~ Chapter.

A. MINORS UNDER THE AGE OF 18.

Businesses owned and conducted by minors under the age of eighteen (18) years **shall** be exempt from the business tax provisions of this chapter where all of the following conditions exist and legal documentation is provided to support that:

1. All persons engaged in the operation of the business are under the age **of** eighteen (18) years, and
2. All persons engaged in the operation of the business have a bona fide ownership interest in the business, and
3. **Gross** receipts do not exceed \$3,000 per year.

B. CHARITABLE, RELIGIOUS, AND NONPROFIT ORGANIZATIONS.

1. *Organization activities.* The provisions of this chapter shall not be deemed or construed to require the payment of a business ~~tax~~ to conduct, manage, or carry on any **business**, occupation, or activity of any institution or organization recognized by the State of California or Internal Revenue Service of the United States as a "Domestic Non Profit Organization" to conduct business which is wholly for the benefit of charitable, religious, or nonprofit **purposes** and from which a profit is not derived, either directly or indirectly, by any person.

2. *Nonexempt activities.* The exemption provisions of **this** section shall not be construed to extend to any person, business, corporation, or organization receiving a fee, wage, stipend, *salary*, remuneration, compensation, or pay for performance of any business, occupation, or activity related to exempt organization activities. Any such person, business corporation, or organization shall be subject to the business tax provisions of this chapter and shall obtain a Business Tax Certificate prior to any business, occupation, or activity being undertaken in the City.

C. CONFLICTS WITH FEDERAL AND STATE LAWS OR CONTRACTUAL AGREEMENTS. The provisions of **this** chapter shall not be construed to require a person to obtain a business tax certificate prior to doing business within the City if such requirement conflicts with the applicable statutes, laws, or constitution of the United States or the State of California or other contractual obligations or franchise agreements. The Finance Director may develop administrative guidelines concerning exemptions, apportionment, and any other matters which he determines as necessary for the lawful and effective implementation of **this** Chapter.

D. CERTAIN HOME OCCUPATIONS

1. Every person commencing, transacting, and carrying on in the city any business in **his** home in a residential zone, not **as** a nonconforming **use**, whose annual gross receipts from such business is \$3,000 **or** less shall not be required to pay a business tax.

2. Persons who by reason of age or infirmity **are** physically unable to **earn** a livelihood through ordinary means of **labor or** business, whose annual gross receipts from such business is \$5,000 or less shall not be required to pay a business tax.

E. PUBLIC UTILITIES

Public **utilities** engaged in providing services or commodities to the City **of** Lodi under a franchise agreement shall not be required to pay a business tax.

F. DISABLED VETERANS

Veterans of the armed forces **of** the United States qualified under the provisions of the Business & Professions Code Section 16001 shall not be required to pay a business tax.

G. RESIDENTIAL RENTAL UNITS

Persons renting four or less residential units within the City shall not be required to pay a business license tax.

H. STREET FAIRS AND SPECIAL EVENTS

Sponsors of street fairs or special events may request the City Council to waive the Business License **Tax** in **part** or whole for participants of a street fair or special event when the waiver is for a limited **period** of time and a participant does not otherwise conduct business within the City **of** Lodi either directly **or** indirectly by positing, advertising or other means as described in Section **3.01.470** below; and, when the City Council determines a blanket waiver of the Business License Tax for a street fair or special event is in the best interest of the City

SECTION 3.01.040 DEFINITIONS

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in **this** chapter **are** defined **as** follows:

A. **"Business"** shall mean and include professions, trades, vocations, rentals, leases, enterprises, establishments, and occupations and all and every kind of calling, any of which is conducted for the purpose of earning in whole, or in ~~part~~, a profit or livelihood, whether or not a profit ~~or~~ a livelihood actually is earned thereby, whether paid in money, goods, labor, or otherwise, and whether or not the business has a fixed place of business in the City.

B. **"Finance Director"** shall mean the individual designated by the City Manager to collect business ~~taxes~~ pursuant to the provisions of this chapter.

C. **"Gross Receipts"** shall mean and include the ~~total~~ amounts received ~~or~~ receivable from sales, ~~services~~, rentals, or leases in the total amounts actually received or receivable for the performance of any ~~act~~ or ~~service~~, of whatever nature it may be, for which a charge is made or a credit allowed, whether or not such act or ~~service~~ is done ~~as~~ a part of, or in connection with, the ~~sale or~~ rental of materials, ~~property (real or personal)~~, goods, wares, ~~or~~ merchandise. Included in "gross receipts" shall be receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost ~~of~~ the property sold, rented or leased, ~~the~~ cost of the materials used, labor and service ~~costs~~, interest paid or payable, or ~~losses~~ or other expenses whatsoever.

Excluded from "gross receipts" shall be the following:

1. Cash and jobber discounts (which reduce selling price and ultimate receipts from ~~sale~~);

2. Any ~~tax~~ (such ~~as~~ a ~~sales tax~~, use ~~tax~~, gas ~~tax~~, transient occupancy ~~tax~~, real property transfer ~~tax~~) which is measured by the ~~sales~~ price and is included in the purchase price and collected from the consumer or purchaser;

3. Any refund that is granted, either in cash or credit, to a purchaser who returns property upon the rescission of a contract of sale;

4. Amounts received by persons acting ~~as~~ agents, brokers or ~~trustees~~, where such amounts have been collected ~~for~~ and ~~are~~ paid to another ~~party~~ (e.g., amounts collected by salesmen and transmitted to manufacturer or distributor; trust funds received and transmitted by ~~trustee~~; fees separately itemized on statements and forwarded to a subcontractor or fee consultant ~~as~~ payment for services rendered, provided that a list of subcontractors ~~or~~ consultants and amounts paid is ~~reported~~ to the city; receipts collected for and subsequently paid to a lessor, provided that the name of the lessor and the amount paid is ~~reported~~ to the city);

5. Amounts received ~~as~~ refundable deposits, except those amounts that are forfeited and subsequently taken ~~as~~ business income;

6. Any credit that is granted for property provided by the consumer or purchaser ~~as~~ part ~~of~~ the purchase ~~price~~ (trade-in merchandise), provided that the value of property taken is reported in gross receipts when sold to someone else;

7. Bad debts, when credits ~~are~~ reported in total in the first year and prove uncollectible in a subsequent year;

8. Passive income (e.g., interest on investments, dividends, occasional ~~sale~~ of property or ~~surplus~~ equipment, etc.); and

9. Receipts not taxable by virtue of provisions included in the Federal ~~or~~ State Constitution.

E. "Person" shall mean and include all domestic and foreign corporations, associations, syndicates, joint-stock corporations, partnerships of every kind, clubs, Massachusetts trust, business, and other common law trusts, societies, and individuals transacting and carrying on any business in the City, other than an employee.

F. "Sworn Statement" shall mean an affidavit sworn to before a person authorized to ~~take~~ oaths or a declaration or certification made under the penalty of ~~perjury~~.

G. "Gross receipts subject to the business tax" shall be that portion of **gross** receipts relating to business conducted within the City. For businesses with their headquarters located within the City of Lodi, their ~~total~~ gross receipts shall be deemed to be related to business conducted within the City ~~unless~~ an apportionment of **gross** receipts is requested by the business pursuant to Section 3.01.490 of this chapter.

SECTION 3.01.050 BUSINESS CLASSIFICATIONS

For purposes of this chapter, the broad classifications used in this chapter ~~are~~ defined ~~as~~ follows:

A. "Administrative Headquarters" - Any business operation where the principal ~~business~~ transacted consists of providing administrative or management related services such ~~as~~, but not limited to, record keeping, data processing, research, advertising, public relations, personnel administration, legal and corporate headquarters services, to other locations where the operations of the ~~same~~ business ~~are~~ conducted which lead more directly to the production of **gross** receipts.

B. "Contractors" - Any person who is licensed ~~as~~ a contractor by the State of California and who undertakes to or offers to undertake to or purports to have the capacity to undertake to ~~or~~ submits a bid to, or does himself or by or through others, construct, alter, **repair**, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other **structure**, project, development or improvement, or to do any ~~part~~ thereof, including the erection of scaffolding or other structures or works in connection therewith, is defined ~~as~~ a contractor. The term contractor includes subcontractor and specialty contractor.

C. "Manufacturers" - Any person conducting, managing or **carrying on** a business consisting mainly of manufacturing, packing, or processing any goods, wares, merchandise or produce.

D. "Professions" - Any person, group, association, partnership, **firm** or **corporation** engaged in a profession or vocation licensed by the State, related to a licensed profession or vocation, and/or requiring a period of specialized training such ~~as~~, but not limited to, physicians, dentists, attorneys, and accountants.

E. **"Public Utilities"** - Any person, including the City of **Lodi**, engaged in the business of providing utility services to the general public or to private businesses including such **services as** electrical, gas, sanitary and garbage, water, sewer, cable television and telephone.

F. **"Recreation and Entertainment"** - Any person engaged in the business of providing directly recreation, entertainment, or amusement services.

G. **"Rental of Residential Property"** - Any person engaged in the business of renting or letting a building ~~or~~ structure to a tenant for purposes of dwelling, sleeping or lodging (i.e., apartment, duplex, condominium ~~or~~ other residential property rental excluding hotels and motels).

H. **"Rental of Non-Residential Property"** - Any person engaged in the business of renting or letting a building or structure to a tenant for purposes ~~of~~ conducting business (i.e., commercial retail space, office buildings, warehouses or other non-residential property ~~use~~). Space occupied by the owner is exempt.

I. **"Retail"** - Any person conducting, managing or carrying on the business consisting mainly of selling at retail any goods.

J. **"Services"** - Any business providing services, **repairs** or improvements to or on ~~real~~ and personal property; renting or leasing personal property to businesses or persons; involving the operation ~~of~~ hotel or motel; providing services to persons such **as**, but not limited to, laundries, cleaning and dyeing, shoe ~~repair~~, barber and beauty shops, photographic studios, and transportation.

K. **"Wholesale"** - Any person conducting, managing or carrying on the business consisting mainly of selling at wholesale any goods,

L. **"Miscellaneous"** - Any person engaged in a business not specifically described by other provisions of ~~this~~ ordinance and not otherwise exempt.

SECTION 3.01.060. SAVINGS CLAUSE

The provision of this chapter are severable. Should any portion of this chapter ~~be~~ deemed invalid by a court of competent jurisdiction, the provisions of Chapter 3.01 shall remain in full force and effect.

ARTICLE II. TAX AMOUNTS

SECTION 3.01.110. TAX BASIS

The amount ~~of~~ the business tax to be paid by the applicant shall be paid at a rate determined by the business classification established by resolution of the City Council.

SECTION 3.01.120. TAX RATE

The tax rate ~~for~~ all businesses shall be set by Resolution of the City Council.

SECTION 3.01.130. MINIMUM TAX

The minimum tax shall be paid in full on application for a Business License Certificate and shall not be prorated for the calendar year of January 1 through December 31.

SECTION 3.01.140. PAYMENT SCHEDULE

When the Business License ~~Tax~~ is greater than \$750, the tax may be paid to the City in four equal installments due January 31, April 30, July 31 and October 31.

ARTICLE III. APPLICATION AND RENEWAL

SECTION 3.01.210. BUSINESS TAX CERTIFICATE APPLICATIONS

Every person required to have a business tax certificate pursuant to the provisions of ~~this~~ chapter shall **make** a written application to the Finance Director and submit the following information:

- A. The nature or kind of business for which the business tax certificate ~~is requested;~~
- B. The place where the business is to be conducted and, if the business **is** not to be conducted at a permanent location, the residence address, identified **as** such, of the **owners of** the business;
- C. If the application is made for the issuance of a business tax certificate to a **person** to do business under a fictitious name, the names, social security numbers, and residence addresses of the owner(s) of the business;
- D. If the application is made for the issuance of a business tax certificate to a ~~corporation~~ or partnership, the names, franchise tax number, and residence addresses of the officers or partners thereof; and
- E. Any further information which the Federal or State ~~Taxing~~ authority or the Finance Director may require to enable the issuance of the business tax certificate.

SECTION 3.01.220 BUSINESS TAX CERTIFICATE RENEWALS

In all ~~cases~~, the applicant for the renewal of the business tax certificate required by the provisions of ~~this~~ chapter shall submit to the Finance Director a written statement, upon a form provided by the Finance Director, written under ~~penalty~~ of ~~perjury~~ or sworn to before a **person** authorized to **administer** oaths, ~~setting~~ forth the actual gross receipts ~~earned~~ the preceding calendar or fiscal year ~~as~~ reported to any **Federal** or **State taxing** authority to which **gross receipts are reported** to enable ~~the~~ Finance Director to ascertain the amount of the business tax to be paid. Unless otherwise specifically provided, all annual business taxes required by the provisions of this chapter shall be due and payable on **January 1st** of each year and shall be delinquent on January 31st of each year.

No renewal of a business tax certificate shall be issued until payment in full of all delinquent business taxes, including accrued interest and applicable penalties thereon is received by the City. It shall be the responsibility of the applicant to ensure renewal of the business tax certificate.

ARTICLE IV. BUSINESS TAX CERTIFICATE ISSUANCE

SECTION 3.01.310. CONTENT

All business **tax** certificates required by the provisions of this chapter, unless otherwise provided in **this** chapter, shall be **prepared** and issued by the Finance Director upon the payment to the City of the proper amount of business tax. Each business tax certificate shall state upon the face thereof the following:

- A. The name of the **person** to whom the business tax certificate is issued
- B. The **type** of business taxed
- C. The location or address of the business taxed
- D. The date of **the** expiration of **the** business **tax** certificate

E. That **the** possession of **the** business tax certificate shall not authorize, permit, or allow the person to do any act which such person would not otherwise be lawfully entitled to do.

SECTION 3.01.320. POSTING AND KEEPING

All business tax certificates issued pursuant to **the** provisions of this chapter shall be **posted** and kept in **the** following manner:

A. Any persons **transacting** and carrying on **the** business at a permanent location in the City shall keep such business tax certificate posted in a conspicuous place upon **the** premises where such business is carried on.

B. Any persons transacting and **carrying** on business, but not **Operating** at a permanent location in the City, shall keep such business tax certificate upon them at **all** times while transacting and **carrying** on such business.

SECTION 3.01.330. DUPLICATES

A duplicate business **tax** certificate may be issued by the Finance **Director** to replace any business tax certificate previously issued pursuant to **the** provisions of this chapter, which business tax certificate has been lost **or** destroyed, upon the filing of a statement of such fact and the payment of **a** duplicate fee set by resolution of the City Council.

SECTION 3.01.340. BRANCH ESTABLISHMENTS

A separate business tax certificate shall be issued for each branch establishment or location of business; provided, however, warehouses and distribution plants used in connection with, and incidental to, a business tax pursuant to the provisions of this chapter shall not be deemed to be separate places of business or branch establishments; and provided, further, any person conducting two (2) or more **types** of business at the same location and under the same management, or at different locations, but which businesses **use** a single set or integrated set of **books** and records, may elect to pay only one business **tax** calculated on all the gross receipts of the businesses, except that a fee set by resolution of the City Council shall be paid upon issuance for each additional branch or location.

SECTION 3.01.350. CHANGE OF LOCATION

No business tax certificate issued pursuant to the provisions of this chapter shall be transferable; provided, however, where a business tax certificate is issued for a person to transact and ~~carry~~ on a business at a particular place, such person, upon an application therefor and the payment of a fee set by resolution of the City Council, may have the business tax certificate reissued for transacting and carrying on of such business under such business tax certificate at some other location to which it is to be moved.

ARTICLE V. ADMINISTRATION

SECTION 3.01.410. CERTIFICATION OF RECORDS

A. **CONCLUSIVENESS OF STATEMENTS.** No statement ~~required~~ by the provisions of ~~this~~ chapter shall be conclusive as to the matters set forth therein, nor shall the filing of such statements preclude the City from collection by appropriate action such sums ~~as are~~ actually due and payable pursuant to the provisions of this chapter. Such statements and each of the several items therein contained shall be subject to certification by the Finance Director, the deputies of the Finance ~~Director~~, or authorized employees or representatives of the City, who ~~are~~ hereby authorized to examine such books and records of any certificate holder or applicant for a business tax certificate ~~as may be~~ necessary in their judgment to verify or ascertain the amount of the business tax due.

B. **RECORD RETENTION.** All persons subject to the provisions of this chapter ~~shall keep~~ complete records of all business transactions and shall retain such records for examination by the Finance Director, the deputies of the Finance Director, or authorized employees or representatives of the City, and maintain them for a period of at least three years from the annual due date of the federal tax return or the City business tax return, whichever time period is greater. Records which shall be maintained for audit purposes shall include State and Federal income tax returns, schedules and records included in such returns, and any and all work papers ~~used~~ to prepare such returns.

C. **EXAMINATION OF RECORDS.** All business tax certificate holders, applicants for business tax certificates, and persons engaged in business in the City ~~are~~ hereby ~~required~~ to permit an examination of such books and records for the purposes ~~set~~ forth in this section during regular business hours and at reasonable times.

D. **INTEREST AND PENALTIES.** If, subsequent to the examination, it is determined that the business has been delinquent or has non-reported or under-reported gross receipts, thereby underpaying business taxes, the certificate holder shall pay to the City within ten (10) days of notification of the determination of the amount of tax due, interest in the amount equal to the current rate for ninety (90) day ~~Treasury~~ Notes from the date the tax was due, and a penalty in the amount of the business tax due. Interest shall continue to accrue on the additional tax amount until such amount is paid in full. A mistake made in stating the amount of the business tax shall not, in any case, prevent or prejudice the Finance Director from collecting what is actually due from any person or entity carrying on a trade, calling, profession, or occupation subject to a business tax under ~~this~~ chapter.

E. **DETERMINATION OF TAX AMOUNTS DUE.** If any person subject to the **tax** imposed by this chapter fails to submit information required, or if the Finance Director is not satisfied with records and statements filed, the Finance Director shall determine the amount of the business tax due from such person by means of such information **as** may be obtainable and shall mail a notice **of** the amount **so** assessed by serving it personally or by depositing it in the United **States** Post Office at **Lodi**, California, postage prepaid, addressed to the person at their last-known address.

SECTION 3.01.420. INFORMATION CONFIDENTIAL

It shall be unlawful for the Finance Director or designee, or any person having an administrative duty pursuant to the provisions of **this** chapter, to make known in any manner whatever the business **affairs**, operations, or financial information obtained by **an** investigation of the **records** of any person required to obtain a business tax certificate, or pay a business tax, or any other person visited or examined in the discharge or the official duty of the Finance Director, or **of** the amount or **source** of income, profits, losses, or expenditures, or any particular thereof, set forth in any statement or application, or amended statement or application, or copy of either, or in any **book** containing any abstract or particulars therein to be seen or examined by any person; provided, however, the provisions of this section shall not be construed to prevent:

A. Disclosure to, or the examination of records and equipment by, another City official, employee, or agent for the collection of taxes for the sole purpose of administering or enforcing the provisions of **this** chapter or collecting the business taxes imposed by the provisions of **this** chapter;

B. The disclosure of information to, or the examination of **records** by, **Federal** or State officials, or the tax officials **of** another city or county, if the reciprocal arrangement exists, **or** to a grand jury or court of law upon a subpoena;

C. The disclosure of information and the results of examination of **records** of particular taxpayers, or relating to particular taxpayers, to a court of law for proceedings brought to determine the existence of the amount of any business tax liability **of** such particular taxpayers of the City;

D. The disclosure, after the filing of a written request to **the** effect, to the taxpayer, or to the taxpayers' **successors**, receivers, trustees, executors, administrators, assignees, or **guarantors** if directly interested, of information **as** to items included in the measure of any paid business **tax**, any unpaid business **tax**, or any amount of business tax required to be collected, including **interest** and penalties; further provided, however, that the City Attorney shall approve each such disclosure, and the Finance Director or designee may refuse to make any disclosure referred to in this subsection when, in their opinion, the public interest would suffer thereby;

E. The disclosure of the names and business address of persons to whom business tax certificates have **been issued** and the general **type** and nature of their business;

F. The disclosure, by way of public meeting or otherwise, of such information **as** may be necessary to the City Council in order to permit the City Council to be fully advised **as** to the facts if a taxpayer files a claim for the refund of business taxes, or submits an offer of compromise with regard to a claim asserted against them by the City for business taxes, or when acting upon any other similar matter; and

G. The disclosure of general statistics regarding business ~~taxes collected~~ or business done in the City.

SECTION 3.01.430. FINANCE DIRECTOR ~~ADJUSTMENT~~ POWERS

The Finance Director shall have the power, for good cause shown, and documented by the Finance Director as a permanent record:

- A. To extend the time for filing any required sworn statement;
- B. To waive any penalties which would otherwise have accrued;
- C. To adjust the amount of the business tax due;
- D. To make refunds or prorations of ~~taxes~~ paid; and
- E. To establish a basis or "proxy" to calculate gross receipts for those businesses and classes of business which do not have a "gross receipts" on which to base the tax, i.e. administrative headquarters.

SECTION 3.01.440 DEBT TO CITY

The amount of any business ~~tax~~ and penalty imposed by the provisions of this chapter shall be deemed a debt to the City. A suit may be brought against any person to enforce the collection of the debt described in ~~this~~ Chapter in any ~~court~~ of competent jurisdiction.

The conviction of any person for transacting any business without a certificate shall not excuse or exempt such person from payment of any license due or unpaid at the time of such conviction and nothing herein shall prevent a criminal prosecution for any violation of the provisions of ~~this~~ Chapter.

SECTION 3.01.450. DELINQUENCIES ~~AND~~ PENALTIES

For failure to pay the business tax required by the provisions of ~~this~~ chapter prior to the delinquency date, the Finance Director shall add a penalty of Ten and ~~no/100ths~~ (\$10.00) ~~or~~ ten percent (10%) of the business tax, whichever is the greater, on the first day of each month after the delinquency thereof; provided, however, the total amount of such ~~penalty to be~~ added in no event shall exceed one hundred percent (100%) of the amount of the business tax due.

SECTION 3.01.460. ENFORCEMENT

A. DUTIES OF THE FINANCE DIRECTOR AND ~~CHIEF OF~~ POLICE. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in such enforcement as may from time to time be ~~required~~ by the Finance Director.

B. INSPECTIONS. The Finance Director, in the exercise of the duties imposed by the provisions of this section, and acting through deputies of duly authorized assistants, shall have the right to enter and examine all places of business free of charge during normal business hours to ascertain whether the provisions of this chapter are being complied with.

C. **PENALTY FOR VIOLATION.** Any person who violates any provision of Section 3.01.102 by transacting and carrying on any business, trade, vocation, enterprise, establishment, occupation, or calling in the City without first having procured a business tax certificate is guilty of an infraction and is subject to punishment **as** provided for in Chapter 1.08.010 of this municipal code.

SECTION 3.01.470 EVIDENCE OF DOING BUSINESS

When any person, by the **use** of a sign, circular, card, telephone **book**, newspaper, other publication, or advertising media, shall advertise, hold out, or represent that they **are** in business in the City, or when any person holds an active license or permit issued by a government agency indicating that they **are** conducting a business in the City, and such person fails to deny, by a sworn statement given to the Finance Director or designee, that they are not conducting a business in the City after being **requested** to do **so** by the Finance Director or designee, **then** these facts shall be considered prima facie evidence that such person is conducting a business in the City.

SECTION 3.01.480. REMEDIES CUMULATIVE.

All remedies prescribed by the provisions of this chapter shall be cumulative, and the **use** of one or more remedies by the City shall not bar the **use** of any other remedy for the **purpose** of enforcing the provisions of this chapter.

SECTION 3.01.490 APPORTIONMENT

When the business **tax** imposed by this Chapter cannot be enforced without there being an apportionment according to the amount of business done in the City of Lodi, apportionment rules shall be established by the Finance Director. The Finance Director shall conduct an investigation and shall fix as the business tax for the applicant an amount that is reasonable and nondiscriminatory or, if a business tax has already been paid, shall order a refund of the amount over and above the business tax **so** affixed. In fixing the business tax to be charged, the Finance Director shall have the power to base the business tax upon a percentage of gross receipts, operating expenses, floor **space**, payroll, number of employees, business taxes paid to other cities, or any other measure which will assure that the business tax **assessed** shall be uniform with the amount of business done in the City of Lodi, or of businesses of a like nature, so long as the amount **assessed** does not exceed the business tax set forth in this Chapter.

SECTION 3.01.500 APPEALS

A. Any tax payer aggrieved by a decision of the Finance Director with respect to the issuance or refusal to issue a business tax certificate may appeal such decision by first submitting a written request to the City Manager for an administrative hearing by the City Manager or his designee who shall have the power, for good **cause** shown to:

1. Waive any penalties which would other wise accrued;
2. Adjust the amount of the business tax due;
3. Make refunds or prorations of taxes paid; and
4. Establish a basis or "proxy to calculate the tax .

B. Any ~~tax~~ payer dissatisfied with the decision of the City Manager or his designee following an administrative hearing may appeal to the city council by filing a notice of such appeal with the city clerk. The ~~city~~ council shall thereupon fix a time and place for hearing such appeal. The city clerk shall give notice to such ~~person~~ of the time and place of hearing by serving it personally or by depositing it in the United States Post Office at ~~Lodi~~, California, postage prepaid, addressed to such person at his last-known address.

ARTICLE VI. IMPLEMENTATION

SECTION 3.01.510. IMPLEMENTATION OF REVISED PROVISIONS

For business tax renewals due between January 1, ~~1995~~ and April 1, ~~1995~~, the ~~tax~~ rate upon renewal will be the amount of ~~tax~~ paid in ~~1994~~ but not less than the minimum ~~tax~~ set by resolution of the City Council.

The Finance Director shall have the power, for economic hardship or financial impact on any one business, to adjust the amount of the business ~~tax~~ due through January ~~1997~~.

Chapter ~~9.16.010~~ Definitions, is hereby added to read **as** follows:


9.16.010 Definitions.

B. "Solicitor" means any person who takes orders, or offers to ~~sell~~ or take orders for any goods, wares, merchandise or thing, for future delivery, or for services to be performed, at any place in the city other than a fixed place of business, and who does not follow a fixed route or serve prospective purchasers in the city regularly or continuously. "Solicitor" does not include salesmen or agents for wholesale houses or firms who ~~sell~~ to retail dealers for resale or sell to manufactures for manufacturing purposes or to bidders for public works or supplies, or newspaper carriers.

~~All~~ ordinances and parts of ordinances in conflict herewith ~~are repealed~~ insofar as such conflict may exist.

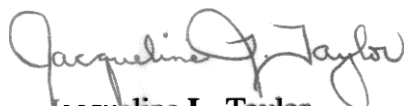
This ordinance is for the usual and current expenses of the City and is adopted pursuant to Government Code 36937(d). **This** ordinance shall be published one time in the Lodi News Sentinel, a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect immediately upon its ~~passage~~ and approval.

Approved ~~this~~ 1st day of March 1995



Stephen J. Mann, Mayor

Attest:


Jacqueline L. Taylor
Acting City Clerk

State of California
County of San Joaquin, ss

I, Jacqueline L. Taylor, Acting City Clerk of the City of **Lodi**, do hereby certify that **Ordinance** No. 1607 was introduced at a regular meeting of the City Council of the City of Lodi held **February** 15, 1995 and was thereafter **passed**, adopted and ordered to print at a regular meeting of said Council held March 1, 1995 by the following vote:

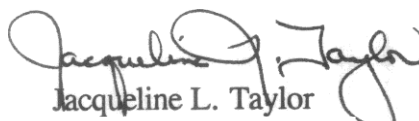
Ayes: Council Members -Pennino, Sieglock, Mann (Mayor)

Noes: Council Members -Davenport, Warner

Absent: Council Members - **None**

Abstain: Council Members - **None**

I further certify that Ordinance No. 1607 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.


Jacqueline L. Taylor
Acting City Clerk

Approved ~~as~~ to Form


Bobby W. McNatt
City Attorney